

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

SUNNY K. PHILIP	§	
Plaintiff/Counter-Defendant	§	
	§	
vs	§	
	§	CAUSE NO: 1:17-CV-110
CITY OF LA FERIA, TEXAS	§	
Defendant/Counter-Plaintiff	§	

PLAINTIFF SUNNY K. PHILIP'S SECOND AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, PLAINTIFF, SUNNY PHILLIP and files this Second Amended Original Complaint and for cause would show unto this Honorable Court as follows:

I.
PARTIES

1.1 Plaintiff is an individual residing in Cameron County, Texas.

1.2 Defendant, City of La Feria, Texas has filed an answer herein.

II.

DISCOVERY LEVEL

2.1 Discovery is Pursuant to Rule 190 of the Texas Rules of Civil Procedure, Plaintiff hereby states that discovery in this case is intended to be conducted under

Level 2 in accordance with Rule 190.3. Plaintiff reserves the right to later proceed under a Level 3 discovery control plan.

III.

VENUE AND JURISDICTION

3.1 Cameron County is the proper county for the venue of this cause of action, pursuant to section 15.015 of the Civil Practice and Remedies Code.

IV

FACTS OF THE CASE

4.1 On or about April 11, 1996 Plaintiff was hired as the City Manager for the City of La Feria, Texas.

4.2 On or about April 11, 1996 Plaintiff and the Defendant, City of La Feria, Texas entered into a written agreement of employment.

4.2 Plaintiff as City Manager provided the services requested and discharged the duties that were assigned to him as City Manager.

4.3 Plaintiff, as City Manager represented the City of La Feria vis-a-vis other governmental entities. He was also the individual responsible to respond to citizen complaints and concerns.

4.4 As the City of La Feria's CEO Plaintiff made himself available to the city commission who in essence were his employer. He sought advice and solicited constructive criticism from his commission.

4.5 Plaintiff as the City Manager, met on a regular basis with the mayor to discuss city business, prepare agendas and provide the mayor with updates on projects and concerns that he had regarding the roles of the commission and that of the city manager.

4.6 Defendant was required to provide annual evaluation of the plaintiff, which it failed to do.

4.7 On July 12, 2016 the City Commission met and voted to terminate the services of Plaintiff as City Manager as of July 15, 2016

4.8 Pursuant to the provisions of the contract entered into by the parties, the Defendant had three options: 1) they could give him 18 month advance written notice and continue his employment during the 18 months; 2) they could terminate immediately and provide a 12 month severance package that included his salary and automobile allowance or; 3) they could continue Plaintiff's employment for a fractional time period of the 18 months and pay an amount equal to the basic salary employee would otherwise receive and use of the automobile for remaining 18 month period .

4.9 A true and correct copy of the contract entered into by the parties has been attached to Plaintiff's original petition and incorporates the same herein.

V.

PLAINTIFFS' CAUSES OF ACTION AGAINST DEFENDANT

5.1 The Defendant by and through the actions of the City Commission of the City of La Feria, Texas have breached the contract entered into by the parties on April,11, 1996. Plaintiff brings his claims inter alia under the Texas Local Government Code Section 271.151 et. seq.

5.2 Plaintiff would further show that the defendant did not have good cause for the termination

5.3 Defendant failed to provide Plaintiff with any written evaluations, any reprimands for any actions that the Commission believed he may have taken which are contrary to policy or law, nor did they provide him an opportunity to properly prepare an adequate defense to the allegations made against him by various commission member on July 12, 2016.

5.4 Plaintiff, further brings this action under the Texas Civil Practice and Remedies Code section 38.001 et seq. as a declaratory action. Plaintiff herein seeks the court to enforce the written agreement entered into by the parties on April 11, 1996 requiring the City of La Feria to make

VI

NOTICE

6.1 Notice has been provided to the city of Plaintiff's claims. Actual notice was provided on July 12, 2016 when the defendant's city commissioner's voted to

terminate Plaintiff's written contract, of which they had full knowledge. Further, written notice was sent to counsel for the Defendant City of La Feria, Texas.

VII.

DAMAGES

7.1 Plaintiff has suffered damages pursuant to his contract with the City of La Feria and sues for his annual salary of \$125,000.00 and an additional \$62,500 such sums represent the amounts owed under the executed contract between the parties. Additionally Plaintiff seeks to recover his medical insurance coverage of \$400 per month which totals to \$7,200.00. Additionally, Plaintiff seeks to recover the costs associated with the use of the city owed automobile.

7.2 Plaintiff has incurred court costs and attorney's fees pursuant to Texas Local Government Code Section 271.151 et. seq. as well as the Texas Civil Practice and Remedies Code section 38.001 et seq.

VIII

NO FEDERAL CLAIMS

8.1 Plaintiff herein specifically makes no claims under any federal statute, law or the United States Constitution.

JURY DEMAND

Plaintiffs request a jury trial.

WHEREFORE, PREMISES CONSIDERED, Plaintiff pray that Defendant be cited to appear and answer and that upon final hearing they recover judgment against the Defendant for his damages as they may appear at trial hereof, together with prejudgment and postjudgment interest, attorney's fees, costs of court, and such other relief to which they may be entitled.

Respectfully submitted,

BY: /s/ Ruben R. Pena
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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has been forwarded to the attorneys representing the City of La Feria, via the Court's electronic notification system and electronic mail as allowed by the Federal Rules of Civil Procedure.

Mr. J. Arnold Aguilar
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